

FINANCING AND INVESTMENT FAIRNESS PROVISIONS

Current Law

15 U.S.C. 77c(a)(2) excludes tribal governments from SEC registration requirements when issuing debt.

Reason for Change

This proposal would waive the SEC registration requirements for tribal governments and also direct the SEC to amend its regulations (specifically, Regulation D, 17 CFR 230.15) to include Indian tribes and wholly-owned tribal entities in the definition of "accredited investor" if they have non-trust assets in excess of five million dollars. The term "non-trust asset" would be defined as an asset that is under the direct control of an Indian tribe or tribal entity, and which is not held in trust by the United States for the benefit of the tribe.

Proposal

Amend Title 15 Section 77c(a)(2) to treat tribal governments and their political subdivisions equivalent to state and local governments.

Suggested Language

SEC. XX. EXEMPTION FROM SEC REGISTRATION REQUIREMENTS.

Amendments to exempt certain nontrust assets held by recognized Indian Tribes from certain registrations under the securities laws and to allow Indian Tribes to issue bonds.

(a) The first sentence of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by inserting `or by any Indian tribal government or subdivision thereof (within the meaning of section 7871 of the Internal Revenue Code of 1986),' after `or Territories,'.

(b) Commission to Amend Definition of Accredited Investor to Include Tribes

(1) The Commission shall amend the regulatory definition of an "accredited investor", as provided in Regulation D (17 C.F.R. 230.501), issued under the Securities Act of 1933, and any successor to such regulation, to include any recognized Indian Tribe, or any entity in which all of the equity interests are owned by Indian Tribes, with total non-trust assets in excess of \$5,000,000.

(c) Definitions as used in this Section

(1) the term “Commission” means the Securities and Exchange Commission;

(2) the term “Indian Tribe” shall mean an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency, instrumentality, or subdivision of an Indian tribal government, or an entity established under Federal, State, or tribal law which is wholly owned or controlled by any of the foregoing; and

(3) the term “non-trust asset” means any asset that is—

(A) under the direct control of an American Indian Tribe, or entity owned by the American Indian Tribe; and

(B) not held in trust by the United States for the benefit of that Indian tribe.